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In re Application of: SATOYAMA, et al.
Application No. 10/766,823
Filed: January 30, 2004
For: STORAGE SYSTEM AND
REPLICATION CREATION METHOD
THEREOF

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed 10 August 2005 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

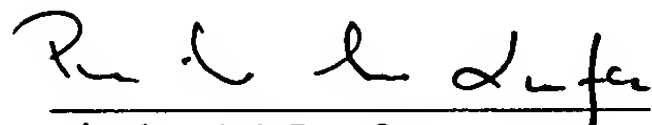
A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

- (a) Submits a petition to make special accompanied by the fee set forth in **37 CFR 1.17(h)**;
- (b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
- (c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;
- (d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
- (e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

Applicant's submission meets all the criteria set out above. The statement repeated for each reference deemed most closely related in the discussion of each reference on pages 8-17 of the petition is sufficient in distinguishing how the claimed subject matter is patentable over the references. Accordingly, the petition is GRANTED.

It is noted that although the statement discussed above has been deemed sufficient, the petition as a whole is potentially confusing. In addition to the statement discussed above, the petition also identifies a first feature of independent claim 1 and a second feature of independent claim 11 and then states that "the prior art does not teach or suggest, at a minimum, the above-described features" (page 7 of the petition). The statement repeated for each reference on pages 8-17 is a subset of each of the first and second features. The petition is potentially confusing since the statement for each reference and the first and second features are of different scope and one could argue that it is not clear whether the statement is intended to distinguish the references or whether the first and second features are intended to distinguish the references. Accordingly, it is suggested that any future petitions be prepared so that there is no such potential confusion. Also, it is suggested that if the identical statement is being made to distinguish each reference from the claims, then the statement should simply be made once in the petition. (E.g., "None of the references disclose")

The application file is being forwarded to the Examiner of Record for accelerated examination according to the procedures set forth in MPEP § 708.02, Section VIII.



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